

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 282

RULES GOVERNING PERMITS FOR ARCHAEOLOGICAL WORK

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§13-282-1 Policy and purpose. Chapter 6E, HRS, authorizes the department of land and natural resources to regulate archaeology throughout the State. This rule establishes a permit system for all archaeological field work undertaken anywhere in this State to improve the overall quality of archaeological work, to obtain reports on all work for the Hawaii inventory of historic places, and thereby to better protect historic properties in the public's interest. [Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-2 Definitions. As used in this chapter unless the context requires otherwise;

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Agency" means any state or county governmental entity.

"Applicant" means archaeological consulting firms, museums, universities, non-profit institutions, or scholars who desire to undertake archaeological field work in Hawaii and whose principal investigator meets the minimal professional standards for archaeologists as provided in chapter 13-281.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Contract archaeology" means archaeological studies undertaken as a part of or in anticipation of the historic preservation review process required by sections 6E-8 or 6E-42, HRS or the National Historic Preservation Act.

"Cultural significance" means a historic property is of value to an ethnic group in the State due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic data recovery plan, an historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the State or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Research archaeology" means archaeological studies undertaken only for research purposes, which are not related to any development project requiring review under sections 6E-8 or 6E-42, HRS

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or a criterion of cultural significance.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff:] (Auth: HRS §§ 6E-2, 6E-3,

6E-7, 6E-8, 6E-42) (Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-282-3 Permit. No archaeological projects shall be undertaken until a permit is first obtained from the SHPD. Permits shall only be issued to archaeological consulting firms, museums, universities, non-profit institutions, or scholars whose principal investigator meets the minimal professional standards for archaeologists as provided in chapter 13-281.

[Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-4 Fees Each contract archaeology permit application for a survey project shall be accompanied by a filing fee of \$200, plus \$100 per acre or major fraction, up to a maximum of \$2,000. All fees shall be in the form of cash, certified or cashier's check, and payable to the Hawaii historic preservation special fund. [Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-5 Contract archaeology permits. (a) A contract archaeology project either identifies significant historic properties through archaeological survey or mitigates effects through archaeological data recovery, monitoring or archaeological work related to preservation.

(b) An archaeological survey permit shall be required to conduct an archaeological survey. An archaeological survey may be either an archaeological inventory survey or a preliminary archaeological or reconnaissance survey. The latter is not intended to meet the minimal standards of chapters 13-276 or 13-284 or to be submitted as an inventory survey for review. Rather it is to provide people with a general understanding as to the character of any sites which may be present in a certain area.

(c) When applying for a survey permit, the following shall be submitted to the SHPD:

- (1) A scope of work, which shall:
 - (A) Specify where the work is to occur (the island, district, ahupua`a and TMK parcel);
 - (B) State who the work is being done for;
 - (C) Present the aim of the work related to the client's development concerns; and
 - (D) Briefly identify data to be collected to address these concerns.

- (2) A resume indicating the principal investigator of the work meets minimal professional standards covered in chapter 13-281, if the resume is not on file at the SHPD;
 - (3) An approximate schedule for the start and completion of the work; and
 - (4) Name and address of the hiring agency or person.
- (d) The SHPD shall send an archaeological survey permit within ten working days of receipt of a complete application.
- (e) The SHPD approval letter for a detailed mitigation plan or monitoring plan shall serve as the archaeological mitigation permit, assuming the consulting archaeologist for the work is specified in the plan. Should the archaeologist who is to implement the plan be someone other than the one who prepared the detailed mitigation plan or monitoring plan, a notification letter indicating the intention to implement the plan with a different archaeologist shall be submitted to SHPD. A resume indicating the principal investigator of the work meets minimal professional standards covered in chapter 13-281, if the resume is not on file at the SHPD, shall be included with the letter. SHPD shall provide within ten working days of receipt of the notification letter a written acknowledgment of the change in archaeologists. The acknowledgment letter shall constitute the archaeological mitigation permit.
- (f) If the scope of work is to be substantially changed, then an amendment to the scope must be approved by the SHPD.
- [Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-6 Research archaeology permits. (a) When applying for a permit, the following shall be submitted to the SHPD:

- (1) An acceptable research proposal. This proposal shall:
 - (A) Specify where the work is to occur (the island, district, ahupua`a and TMK parcel);
 - (B) Present research questions to be studied;
 - (C) Identify data needed to address these questions; and
 - (D) State methods that will be used to gather these data.
- (2) A resume indicating the principal investigator of the fieldwork meets minimal professional standards covered in chapter 13-281, if the resume is not on file at the SHPD. If the application is intended as a master's degree thesis project, then the graduate advisor must serve as a co-principal investigator and a resume must be on file at the SHPD;

- (3) An approximate schedule for the start and completion of the work;
 - (4) A letter from the landowner allowing access on their land to do the work; and
 - (5) Evidence that the applicant undertook a consultation process with ethnic organizations and individuals for whom the historic properties may be of cultural significance. The comments of these individuals or organizations shall be considered when preparing the research proposal. The proposal shall include a list of individuals and organizations contacted, and shall summarize their input.
- (b) SHPD shall review the application as follows:
- (1) If the application is acceptable (contains all items in section 5(a) of this rule), a permit shall be sent to the applicant within ten working days;
 - (2) If the application is not acceptable, the SHPD shall notify the applicant by letter within ten working days, stating why the application was not acceptable. If missing information or revisions are solely needed, this information shall be specified so the application can be finished.
- (c) Each permit shall include the following conditions:
- (1) A requirement that the research proposal shall be followed;
 - (2) A requirement that the applicant present the findings to the relevant local community, after the fieldwork is concluded, so the community is aware of work completed and initial findings;
 - (3) Submittal within 1 month of the conclusion of fieldwork, a brief report on findings to consist of:
 - (A) A map locating all sites studied, to be on a portion of the relevant U.S.G.S. standard 1:24,000 topographic map.; and
 - (B) A table listing each site, its major architectural features, its probable function, and the nature of work at each site (mapping, description, surface collection, test excavation);
 - (4) Submittal of five copies of the final report of the research work to the SHPD within twelve months of the issuance of the permit for appropriate archiving. The report should comply with the reporting requirements in chapter 13-277, with approved exclusions;
 - (5) A requirement that all collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with

private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD;

- (6) A requirement that the applicant shall comply with all applicable statutes, ordinances, rules and regulations of the federal, state and county governments; and
- (7) A requirement that the applicant shall hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant and its employees, contractors and agents under the permit.

(d) If the research proposal's fieldwork plans or reporting deadlines are to be modified, then an amendment to the proposal must be approved by the SHPD. [Eff:] (Auth: HRS §6E-3)
(Imp: HRS §6E-3)

§13-282-7 Notification to landowners and the county of permitted archaeological work. The applicant is responsible for notifying the landowner and the relevant county planning department that a permit has been approved. If the permitted work is to take place in the state conservation district, the applicant shall notify the department of land and natural resources' land division. A copy of the permit shall be included with all notifications. [Eff:] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-8 Permit taken to project location. The permit shall be taken to the location of the archaeological fieldwork, so it can be shown to any members of governmental agencies or the public questioning the authorization of the work. [Eff:] (Auth: HRS §6E-3)
(Imp: HRS §6E-3)

§13-282-9 Duration of the permit. Each permit shall be one year in duration, from the time of permit issuance. If an extension is desired, then a request for an extension shall be submitted to the SHPD sixty days before the original permit expires. [Eff:] (Auth: HRS §6E-3)
(Imp: HRS §6E-3)

§13-282-10 Penalty. Should archaeological work take place without a permit or should work not fulfill a permit's conditions:

- (1) The SHPD shall notify the landowner(s) where the work is occurring and any relevant agency;
- (2) The principal investigator of the archaeological work or the firm, or both shall be subject to penalties as covered under section 6E-11, HRS;
- (3) The principal investigator of the archaeological work or the firm, or both, shall forfeit all items collected and all recorded information to the SHPD, if the violation intentionally occurred. Intentionally shall mean that the violation occurred after the principal investigator or the firm, or both received a copy of this rule, thereby being aware that the rule shall be followed; and
- (4) A permit may be revoked. [Eff:] (Auth: HRS §§6E-3, 6E-11) (Imp: HRS §6E-3)